

REMARKS

Claims 1-15 are pending in this application. Claims 1-4, 12, and 14 stand rejected and claims 5-10 are objected to. Claims 11, 13, and 15 have been allowed. Claims 5-10 have been indicated as containing allowable subject matter. By this Amendment, claims 1, 12, and 14 have been amended. The amendments have been made to improve the form thereof. In light of the amendments and remarks set forth below, Applicant respectfully submits that each of the pending claims is in immediate condition for allowance.

Applicant acknowledges with appreciation the Examiner's indication of allowable subject matter in dependent claims 5-10. For the reasons set forth below, Applicant respectfully submits that claims 1-4, 12 and 14 are also patentable over the prior art of record for the reasons discussed below.

In reviewing the file, Applicant noted that the Information Disclosure Statement filed May 20, 2002, has not been acknowledged by the Examiner. A copy of this Information Disclosure Statement and the postcard is included for the Examiner's convenience. Applicant requests that the Examiner review the cited references and return the initialed Information Disclosure Statement to the Applicant.

For the reasons set forth below, Applicant respectfully submits that claims 1-4, 12, and 14 are allowable over the prior art of record.

Claims 1, 4, 12, and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,559,789 (“Nakano”). Applicant respectfully traverses this rejection.

To anticipate a claim under 35 U.S.C. § 102, the cited reference must disclose every element of the claim, as arranged in the claim, and in sufficient detail to enable one skilled in the art to make and use the anticipated subject matter. See, PPG Industries, Inc. v. Guardian Industries Corp., 75 F.3d 1558, 1566 (Fed. Cir. 1996); C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1349 (Fed. Cir. 1998). A reference that does not expressly disclose all of the elements of a claimed invention cannot anticipate unless all of the undisclosed elements are inherently present in the reference. See, Continental Can Co. USA v. Monsanto Co., 942 F.2d 1264, 1268 (Fed. Cir. 1991).

Each of independent claims 1, 12, and 14 require N pilot channels where N is a positive integer greater than 1, M data channels where M is a positive integer greater than 1 and wherein each of the M data channels is made to dynamically correspond to one or more of the plurality of N pilot channels.

The Office Action asserts that Nakano discloses the dynamic correspondence of the M data channels to the N pilot channels is disclosed in Nakano at column 5, lines 10-50 and Figures 4 and 5. The Office Action asserts that the dynamic correspondence is the knowing the characteristics of the transmitted pilot signal and making adjustments based on measurements of received pilot signal parameters disclosed at column 6, lines 1-32. Applicant disagrees with this interpretation of Nakano. In Nakano, there is only a single data

channel and single pilot channel. Each of the pilot signals corresponds to a single spreading channel. Thus, there is no need to have the dynamic correspondence of data channels to pilot channels as explicitly recited in Applicant's claim.

In Nakano there is a one to one correspondence between the data and pilot channels. There is no suggestion in Nakano to have anything other than the disclosed one-to-one correspondence. Thus, one skilled in the art would not modify the disclosure in Nakano, except in light of Applicant's disclosure, to have the claimed M data channels which are made to dynamically correspond to one or more of the plurality of N pilot channels.

Claims 2-4 depend from, and contain all the limitations of claim 1. These dependent claims also recite additional limitations which, in combination with the limitations of claim 1, are neither disclosed nor suggested by Nakano and are also believed to be directed towards the patentable subject matter. Thus, claims 2-4 should also be allowed.

Applicant requests reconsideration and withdrawal of the pending rejections.

Applicant has responded to all of the rejections and objections recited in the Office Action. Reconsideration and a Notice of Allowance for all of the pending claims are therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the

Application No.: 09/260,903

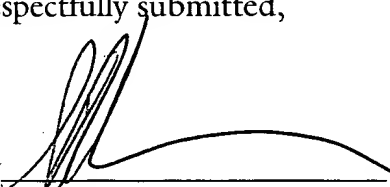
Docket No.: S1905.0080/P080

Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

Dated: December 3, 2003

Respectfully submitted,

By 

Ian R. Blum

Registration No.: 42,336

DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP

1177 Avenue of the Americas - 41st Floor
New York, New York 10036-2714
(212) 835-1400
Attorney for Applicant

IRB/mgs
Attachments